

**CONSTRUCTION AND PERMANENT LOAN AGREEMENT  
EBNER EMPIRE REDEVELOPMENT PROJECT  
LOAN ONE**

**ARTICLE I TERMS AND DEFINITIONS:**

“EFFECTIVE DATE”	February 14, 2006	Being the date as of which this Loan Agreement shall be effective.
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**LENDER AND BORROWER HAVE ENTERED THIS LOAN AGREEMENT AS OF THE EFFECTIVE DATE/CONTINGENCY.** In addition to attachments and Exhibits listed below, this Loan Agreement includes the Article II Loan Provisions, which is attached to and incorporated in this Loan Agreement by this reference. The capitalized terms in this Loan Agreement shall have the meanings assigned in Article I Terms and Definitions and as defined in Article II Loan Provisions. (Terms being defined are indicated by quotation marks. If an item in this Article I table is marked “None, Not Applicable, N/A or equivalent or is left blank, that defined term is not applicable to this Loan or the referenced item is not required or is not included in this Loan as the context may indicate.) The Lender is making the Loan pursuant to the terms and conditions of this Loan Agreement.

**NOW, THEREFORE,** in consideration of their mutual promises, the parties agree as follows:

<b>“LENDER”</b>	The following public agency that is making the Loan, and whose legal status and address are:	
Name	Redevelopment Agency of the City of Sacramento	
Legal Status	A public body, corporate and politic	
Principal Address	630 “I” Street, City of Sacramento, Sacramento County, California 95814	
<b>“BORROWER”</b>	The borrower of the Loan funds whose name, legal status and address are:	
Name	Ebner/Empire LLC	
Legal Status	A California Limited Liability Company	
Principal Address	1720 3rd Street, Suite 202, Sacramento, CA 95816	
<b>“LOAN”</b>	The Loan made by this Loan Agreement.	
“LOAN COMMITMENT”	Lender’s loan commitment, made by letter dated as of	N/A
“LOAN PROGRAM”	Lender’s Loan Program, commonly known as	Downtown Redevelopment with Downtown Tax Increment
“LOAN AMOUNT”	Two Million Three Hundred Fifty Thousand Dollars and No Cents (\$2,350,000.00)	
“INTEREST RATE”	The interest rate is 4% per year. Simple interest shall be calculated on the preceding twelve months loan balance.	
“PAYMENT START DATE”	The first day of the 5th calendar month following the first calendar year following the Effective Date	
“MATURITY DATE”	25 years from the Effective Date or upon sale of the property.	

<p>“PAYMENT SCHEDULE”</p>	<p>The Loan payments shall be payable annually commencing on the Payment Start Date and continuing on the same day of each year thereafter, through and including the Maturity Date. Payment amounts are determined by Developer’s Preferred Return for the prior calendar year. No payment is due if the Developer’s Preferred Return (defined below) for the prior calendar year does not exceed 12% There is no prepayment penalty.</p>
	<ol style="list-style-type: none"> <li>1. This Loan is made pursuant to the Disposition and Development Agreement (“DDA”) and subject to the DDA.</li> <li>2. Borrower shall provide Lender with a copy of any appraisals obtained for the property during the term of the loan.</li> <li>3. Borrower is required to submit quarterly financial statements to the Lender.</li> <li>4. Loan funds shall be used solely for Project (defined below) construction.</li> <li>5. Borrower is required to submit compiled financial statements prepared by an independent accountant annually due on the first day of the fourth calendar month following each calendar year through maturity.</li> </ol>
<p>“PAYMENT AMOUNTS”</p>	<ol style="list-style-type: none"> <li>1. <b>Cash Flow Payment:</b> <ul style="list-style-type: none"> <li>• For any calendar year that Developer’s Preferred Return is less than 12%, no payment is due.</li> <li>• For any calendar year that Developer’s Preferred Return is greater than 12%, Borrower shall make a payment equal to 50% of the amount of Developer’s Preferred Return between 12-14%. This entire payment shall be applied to the principal loan balance.</li> <li>• For any calendar year that Developer’s Preferred Return is greater than 14%, Borrower shall make an additional payment equal to 50% of the amount by which Developer’s Preferred Return exceeds 14%. This additional payment shall be first applied to interest for the subject year, then to principal.</li> <li>• Interest payments shall be capped at no more than 50% of the Developer’s Preferred Return over 14% for any calendar year. Any interest due over that amount shall be forgiven.</li> </ul> </li> <li>2. <b>Refinance Payment:</b> Payment required if refinancing of Primary Loan results in proceeds in excess of payoff amount of the Primary Loan. Payment shall equal 50% of the amount in excess of payoff amount of the Primary Loan. If interest is applicable, payment shall equal 50% of the amount in excess of the payoff amount Primary Loan to be applied first to any interest due based on the preceding 12 months principal balance with any remaining amounts being applied to the principal balance.</li> <li>3. <b>Payment Due Upon Loan Maturity:</b> At loan maturity, Borrower shall pay the remaining principal balance plus interest payable for the prior calendar year (computed in the manner set forth above), if any.</li> </ol>

<p>“PAYMENT DEFINITIONS”</p>	<p>Annual Net Cash Flow      Annual net cash flow shall be equal to the Project’s Annual Net Operating Income less principal and interest on the primary loan.</p> <p>Annual Net Operating Income      The Project’s Net Operating Income shall be defined as consisting of the Project’s actual Gross Income less the Project’s Annual Operating Expenses.</p> <p>Annual Operating Expenses      Annual Operating Expenses shall be limited to the following:</p> <ul style="list-style-type: none"> <li>• Management fee expense not to exceed 4% of gross effective income,</li> <li>• Utility expenses paid by the Developer,</li> <li>• Maintenance expenses no higher than would be paid to non-related third parties,</li> <li>• Security costs,</li> <li>• Leasing and marketing expenses,</li> <li>• Property taxes and insurance paid by the Developer,</li> <li>• Capital reserve account contribution not to exceed 2% of gross effective revenue, and</li> <li>• Other customary recurring expenses identified as a part of an audit upon completion of the first operating year and approved by the Agency.</li> </ul> <p>Developer Preferred Return      Developer Preferred Return for purposes of loan repayment calculations shall be calculated as follows: Annual Net Cash Flow / Developer Equity.</p> <p>Developer Equity      Developer Equity shall be \$1,000,000 (One million dollars).</p> <p>Primary Loan      Primary Loan shall be defined as the debt established to construct the project and established as of the effective date of this loan.</p>
<p>“PROJECT”</p>	<p>Which is the Project to be developed on the Property with the Loan funds, described as:</p> <p>Reconstruction of a single 26,000 square foot building with the facade of two structures: the Ebner Hotel and Empire Hotel and thirteen basement level parking spaces. The design for the facades is already designated as part of the Old Sacramento Historic District.</p>

<p><b>B. “Collateral”</b> The Collateral securing repayment of the Loan, which Collateral consists of the following</p>	
<p>“PROPERTY”</p>	<p>The following described real property, which is security for the Loan and the site of the Project:</p>

Address	116 & 118 K Street, Sacramento, California	
Assessor's Parcel Number	006-0072-028 & 006-0072-029	
"Legal Description"	The Property is situated in the State of California, County of Sacramento, and is more particularly described in <b><u>Exhibit 1: Legal Description</u></b> attached and incorporated by reference.	
Borrower's Title Interest	Borrower has fee interest in the Property or, if the Additional Escrow Instructions so indicate, Borrower will acquire fee interest in the Property at Close of Escrow.	
"ADDITIONAL COLLATERAL"	The Additional Collateral securing repayment of the Loan is any additional security required by Lender under this Loan Agreement, including without limitation the following items, if any:	
"PERSONAL PROPERTY"	Borrower's interest in the following personal property, tangible and intangible, and all other such property listed as security in this Loan Agreement	Materials and supplies for the Project
OTHER ADDITIONAL COLLATERAL	Borrower's interest in the following property:	None

<b>C. "ESCROW INFORMATION":</b>		
"Title Company" and "Escrow Agent"	Chicago Title Company	Which is the title company that will issue the Title Policy and that will act as Escrow Agent for the Escrow
"Escrow"	The escrow with Escrow Agent	
"Closing Date"	<u>                    </u> , 2006	Which is the date for close of the Escrow, as it may be extended

<b>D. "LIST OF EXHIBITS" (The following are attached and incorporated in this Loan Agreement):</b>	
EXHIBIT	DEFINED TERM
<u>Exhibit 1: Legal Description</u>	"Legal Description"
<u>Exhibit 2: Scope of Development</u>	"Scope of Development"
<u>Exhibit 3: Note Form</u>	"Note"
<u>Exhibit 4: Trust Deed Form</u>	"Trust Deed"
<u>Exhibit 5: Regulatory Agreement</u>	"Regulatory Agreement"
<u>Exhibit 6: Escrow Instructions</u>	"Escrow Instructions"
<u>Exhibit 7: Subordination Agreement</u>	"Subordination Agreement"

<b>E. "APPROVAL DOCUMENTS" Borrower shall submit the following documents for Lender approval</b>
Construction Agreements for the Project
Architectural Agreement for the Project
Borrower's organizational documents, such as partnership agreements or corporate articles and by-laws
"Budget" for the Project
Evidence of financing as described in Article II of this Loan Agreement
Plans and Specifications as defined in Article II of this Loan Agreement

**F. "ASSIGNED DOCUMENTS" Borrower shall assign the following documents to Lender**

Construction Contract
Architectural Contract

"Completion Date"	December 31, 2007	Which is the date on or before which the Completion of the Project must occur.	
"General Contractor"	Otto Construction	Which is the general contractor for construction of the Project	
"Project Architect"	McCandless & Associates	Which is the architect for design of the Project	
"Retention"	The following percentage of each disbursement made for construction work, in aggregate not to exceed the following percentage of the Loan Amount, which shall be retained by Lender for disbursement with the final disbursement of the Loan:	Percentage of disbursement:	NO Percent (0%)
		Percentage of Loan:	NO Percent (0%)

This Loan is made pursuant to the DDA. This Loan Agreement is subject to the DDA including without limitation, conditions precedent to funding the Loan or making disbursements of the Loan proceeds.

Loan funds shall be used solely for Project construction. No Loan funds shall be used for predevelopment costs, except as provided in an approved Agency budget. Unless otherwise noted in said budget, predevelopment costs are not subject to the withholding as Retention.

**ARTICLE II LOAN PROVISIONS**

**LENDER AND BORROWER HAVE ENTERED THIS LOAN AGREEMENT AS OF THE EFFECTIVE DATE.** The capitalized terms in this Loan Agreement shall have the meanings assigned in Article I General Terms and as defined in Section 1 of these Article II Loan Provisions. (Terms being defined are indicated by quotation marks.) The Lender is making the Loan pursuant to the Loan Commitment and the terms and conditions of this Loan Agreement.

**NOW, THEREFORE,** in consideration of their mutual promises, the parties agree as follows:

1. **DEFINITIONS.** Terms not defined in Article I and II of this Loan Agreement shall have the definitions assigned in the Trust Deed. If a definition in Article I refers to an Exhibit that is an attached document form, the attached document is a true and correct copy of the document referenced. As used in this Loan Agreement, the following terms shall have the following meanings:

1.1. "Benchmark Operating Expenses" will be set based on the first calendar year after the Project reaches 90% occupancy for three consecutive calendar months. The Benchmark Operating Expenses will be calculated each year by multiplying the original Benchmark Operating Expenses or the previous year's Benchmark Operating Expenses by the CPI Index. For purposes of calculating the Benchmark Operating Expenses, operating expenses will be limited to the following categories:

- Management fee expense not to exceed 4% of gross effective income,
- Utility expenses paid by the Developer,

- Maintenance expenses no higher than would be paid to non-related third parties,
- Security costs,
- Leasing and marketing expenses,
- Property taxes and insurance paid by the Developer
- Capital reserve account not to exceed 2% of gross effective revenue,
- Other customary recurring expenses identified as a part of an audit upon completion of the first operating year and approved by the Agency.

1.2. "Budget" is the budget approved by Lender for the development of the Project.

1.3. "Change" means any extra work or installation of materials not included in the Plans and Specifications or any change in or deviation from the Plans and Specifications.

1.4. "Close of Escrow" means the fulfillment of the Escrow terms and conclusion of the Escrow, including, without limitation, the execution of unexecuted documents, the recordation of documents specified for recording, the issuance of title insurance policies, the payment of fees and the delivery of funds and documents as directed in the escrow instructions for the Escrow. The Close of Escrow shall occur on the Closing Date.

1.5. "Completion of the Project" means that, in Lender's sole judgment the Project has been constructed, rehabilitated completed, equipped, and furnished in a good and proper manner in accordance with the Plans and Specifications, the Scope of Development and the Budget as approved by Lender; all notices of completion with respect to the Project have been filed and all statutory lien periods have expired; all costs of constructing the Project have been paid, including, without limitation, interest on the Note which may be due prior to the Completion Date; all necessary certificates of occupancy have been issued; and all of the conditions to final disbursement of the Loan have been satisfied.

1.6. "Escrow" is the escrow with Title Company for the closing of the Loan.

1.7. "Escrow Instructions" means the Escrow Instructions for the Escrow signed by each of the parties to this Loan Agreement.

1.8. "Event of Default" is breach of or default in a party's obligations under this Loan Agreement, the Trust Deed, the Note and any other instrument which is incorporated in this Loan Agreement or which otherwise secures the repayment of the Loan.

1.9. "Financial Statements" means the financial statements of Borrower (and any other persons on whose financial capacity the Lender has relied in making this Loan) as may be required by Lender from time to time, including operating statements, balance sheets, and any other financial reports and information that Lender may require.

1.10. "Fixtures" means all fixtures located on or within the Project or now or later installed in or used in connection with any of the Project, including, as applicable and without limitation, all partitions, screens, awnings, motors, engines, boilers, furnaces, pipes, plumbing, elevators, cleaning and sprinkler systems, fire extinguishing apparatus and equipment, water tanks, heating, ventilating, air conditioning and air cooling equipment, built-in refrigerators, and gas and electric machinery, appurtenances, and equipment, whether or not permanently affixed to the Project.

1.11. “General Contractor” means the general contractor named by Borrower in his application or supporting documents as the general contractor to do the Project, or any other general contractor so designated by Borrower and approved in writing in advance by Lender.

1.12. “Governmental Authority” means the United States of America, the State of California, the County of Sacramento, the City of Sacramento or any other political subdivision, agency, department, commission, board, bureau, or instrumentality of any of them.

1.13. “Governmental Requirement” means any law, ordinance, order, rule, regulation, plan, ruling, determination or requirement of a Governmental Authority.

1.14. “Loan” is the loan from Lender to Borrower made pursuant to this Loan Agreement.

1.15. “Loan Agreement” means this Construction and Permanent Loan Agreement including Article I and II, all Exhibits attached to this Loan Agreement (which are incorporated in this Loan Agreement by this reference) and the Loan Documents which are not otherwise included in this definition.

1.16. “Loan Documents” means the Note, this Loan Agreement, the Security Documents, and all other documents (including guaranties) evidencing, securing, or relating to the Loan.

1.17. “Loan Maturity Date” means the date on which the entire unpaid balance of the Loan, including principal and interest, is due and payable.

1.18. “Loan Proceeds” means funds disbursed by Lender on account of the Loan and pursuant to this Loan Agreement.

1.19. “Other Lender Draw” means a draw request or other request for disbursement submitted to another lender for the Project.

1.20. “Personalty” means, whether or not listed as Additional Collateral, all of Borrower's interest in all accounts, contract rights, and general intangibles (specifically including any insurance proceeds and condemnation awards) arising out of the ownership, development, or operation of the Property, and all furniture, furnishings, equipment, machinery, construction materials and supplies, leasehold interests in personal property, and all other personal property (other than Fixtures) of Borrower now or later located about the Property, together with all present and future attachments, accessions, replacements, substitutions, and additions, and the cash and noncash proceeds.

1.21. “Plans and Specifications” means the final set of architectural, structural, mechanical, electrical, grading, sewer, water, street, and utility plans and specifications for the Project, including all supplements, amendments, and modifications.

1.22. “Potential Default” means an event that would constitute an Event of Default but for any requirement of notice to be given or period of grace or time to elapse.

1.23. “Project” means the development of the Property in accordance with the Plans and Specifications including, without limitation, all existing buildings, improvements, and appurtenances

on the Property, all work of demolition and rehabilitation to be conducted on the Property, and all improvements, additions, and replacements constructed or placed at any time on the Property.

1.24. "Security Documents" means the Trust Deed, together with all other documents entered into between Borrower and Lender or by Borrower in favor of, or for the benefit of, Lender that recite that they are to secure the Loan.

1.25. "Subordination Agreement" Agency will enter into a subordination agreement if requested to by Developer's primary lender. The form of the subordination agreement shall be in substantially the same form as attached here to as **Exhibit 7: Subordination Agreement**.

1.26. "Title Policy" means the title insurance policies to be issued in connection with this Loan, as further defined in the Escrow Instructions.

**2. BORROWER'S REPRESENTATIONS AND WARRANTIES.** As a material inducement to Lender to enter into this Loan Agreement and to make the Loan to Borrower, Borrower unconditionally, and each signatory who signs on its behalf, to the extent of their actual knowledge, represents and warrants to Lender, as of the Close of Escrow, as follows:

**2.1. LEGAL ORGANIZATION.** Borrower is duly formed and validly exists in the form stated in Article I, is qualified to do business in California, and has full power to consummate the transactions contemplated.

**2.2. BORROWER'S POWERS.** Borrower has full authority to execute this Loan Agreement, the Note, the Trust Deed, and all of the other Loan Documents, to undertake and consummate the contemplated transactions, and to pay, perform, and observe all of the conditions, covenants, agreements, and obligations.

**2.3. BINDING OBLIGATION.** This Loan Agreement, the Note, the Trust Deed, and each of the other Loan Documents constitute a legal and binding obligation of, and is valid and enforceable against, each party other than Lender, in accordance with the terms of each.

**2.4. LITIGATION.** There are no actions, suits, or proceedings pending or, to the best knowledge of Borrower, threatened against or affecting Borrower, the Property, or any part of it, or involving the validity or enforceability of the Trust Deed, the priority of the lien, or the validity or enforceability of any of the other Loan Documents, at law or in equity, or before or by any Governmental Authority. Borrower is not in default with respect to any order, writ, injunction, decree, or demand of any court or other Governmental Authority.

**2.5. NO OTHER BREACH.** The consummation of the transactions covered by this Loan Agreement and the payment and performance of all of the obligations in the Loan Documents, will not result in any breach of, or constitute a default under, any mortgage, deed of trust, lease, contract, loan or credit agreement, corporate charter, bylaws, partnership agreement, trust agreement, or other instrument to which the Borrower or any of its general partners is a party or by which it or they or the Property may be bound or affected.

**2.6. NO DEFAULT.** There is no Event of Default or Potential Default on the part of Borrower.

**2.7. NO UNAPPROVED LOANS.** Borrower has not received financing for either the acquisition of the Property, the construction of the Project or the permanent financing of the Project except as has been specifically disclosed to and approved by Lender in writing.

**2.8. TITLE OF PERSONALTY.** All Personalty is vested solely in Borrower, free of all claims, liens, and encumbrances, and the security interest of Lender in the Personalty is a first lien.

**2.9. USE OF PROCEEDS.** All Loan Proceeds will be disbursed as provided in this Loan Agreement and used only for payment of the costs of construction of the Project in accordance with the Plans and Specifications and for other purposes specified in the Loan.

**2.10. TAXES PAID.** Borrower has filed all required Federal, State, County, and City tax returns and has paid all taxes due and owing. Borrower knows of no basis for additional assessments with respect to any taxes, other than the lien of taxes not yet due.

**2.11. PLANS AND SPECIFICATIONS.** The Plans and Specifications are satisfactory to Borrower and the General Contractor and have been approved by the Lender and all other construction lenders. There are no structural defects in the Project as shown in the Plans and Specifications that are known to or reasonably should have been known to Borrower or its agents and employees, and to the best of Borrower's knowledge, no violation of any Governmental Requirement exists.

**2.12. ACCURACY.** All applications, financial statements, reports, documents, instruments, information, and forms of evidence delivered to Lender concerning the Loan or required by this Loan Agreement or any of the other Loan Documents are accurate, correct, and sufficiently complete to give Lender true and accurate knowledge of their subject matter, and do not contain any untrue statement of a material fact or omit any material fact necessary to make them not misleading.

**3. LOAN.** Lender agrees to lend to Borrower, and Borrower agrees to borrow from Lender, an amount not to exceed the Loan Amount, to finance the development of the Project and for other purposes as specified in the Scope of Development, subject to the terms, conditions, representations, warranties, and covenants in this Loan Agreement.

**3.1. PRINCIPAL AMOUNT.** The principal amount of the Loan shall be the actual disbursements of the Lender on account of the Project, not to exceed the amounts stated in the Budget (as the Budget may be adjusted by written approval of Lender). In any event, the principal amount of the Loan shall not exceed the Loan Amount.

**3.2. USE OF LOAN FUNDS.** Loan funds shall be used solely for actual costs of the Project as stated in the Budget. No Loan funds shall be used for any costs, except as provided in the Budget. Unless otherwise noted in the Budget, allowed predevelopment costs, if any, are not subject to the withholding as Retention.

**3.3. LOAN TERMS.** The Loan is made pursuant to the Loan Program and is subject to the laws, rules and regulations of the Loan Program. Lender agrees to disburse the Loan Proceeds in the manner and subject to the limitations stated in this Loan Agreement. Interest, at the Interest Rate, shall accrue on each disbursement of Loan Proceeds commencing on the date on which each such disbursement is made. Repayment of the loan shall be made, in payments of principal and interest, in lawful tender of the United States, in accordance with the Payment Schedule.

**3.4. NOTE AND SECURITY DOCUMENTS.** The Loan is to be evidenced by the Note executed by Borrower in favor of Lender and delivered to Lender upon Close of Escrow. Repayment of the Note is to be secured by the Trust Deed covering the Property and the Project. Borrower shall execute the Trust Deed in favor of the Title Company as Trustor in trust for the benefit of Lender and deliver it to Escrow for recordation. The Loan is also secured by the Additional Collateral, if any, as evidenced by the applicable Security Documents.

**3.5. REGULATORY AGREEMENT.** The Regulatory Agreement imposing covenants, conditions and restrictions running with the land is a material consideration for the making of the Loan. Borrower shall execute the Regulatory Agreement prior to Close of Escrow and deliver it to Escrow for recordation.

**3.6. ESCROW.** The parties shall open the Escrow promptly after the Effective Date. Escrow shall close as provided in the Escrow Instructions on or before the Closing Date.

**3.7. COMMISSIONS.** Lender is not responsible, by this Loan Agreement or otherwise, to pay commissions in relation to this transaction.

**4. PERFORMANCE CONDITIONS.** The following are conditions precedent to performance under this Loan Agreement:

**4.1. CONDITION OF TITLE.** Lender shall cause Escrow Agent to issue to Borrower (with a copy to Lender) the Preliminary Report, together with copies of all documents relating to title exceptions referred to in the Preliminary Report. At Close of Escrow, Lender's Trust Deed shall be a valid lien against the Property securing the Loan and subject to no exceptions to title (of record or off record) other than the exceptions listed in the "Conditions of Title" in the Escrow Instructions.

**4.2. CONDITIONS TO LENDER'S PERFORMANCE.** Lender's obligation to perform under this Loan Agreement is subject to all of the following conditions: (a) Borrower has performed all of its obligations then to be performed pursuant to this Loan Agreement (b) the closing conditions as defined in the Escrow Instructions have been fulfilled as of Close of Escrow; (c) Borrower's representations and warranties in this Loan Agreement are true and correct as of the Close of Escrow, (d) the Agreement continues to be in full force and effect, no default on the part of Borrower has occurred under the Loan Agreement, and no event has occurred that, with the giving of notice or the passage of time, will constitute a default by Borrower under the Loan Agreement; and (e) Lender has approved the Approval Documents.

**4.3. CONDITIONS TO BORROWER'S PERFORMANCE.** Borrower's obligation to perform under this Loan Agreement is subject to satisfaction of all of the following conditions: (a) Lender has performed all of its obligations then to be performed pursuant to this Loan Agreement; (b) the closing conditions as defined in the Escrow Instructions have been fulfilled as of Close of Escrow; (c) Borrower has met the Conditions to Close of Escrow, (d) Lender's representations and warranties in this Loan Agreement are correct as of the date of this Loan Agreement and as of the Close of Escrow; and (e) the Loan Agreement continues to be in full force and effect, no default on the part of Lender has occurred under the Loan Agreement, and no event has occurred that, with the giving of notice or the passage of time, will constitute a default by Lender under the Loan Agreement.

**5. RELOCATION.** Lender recognizes that relocation is not applicable, since Property is and has been currently vacant. Lender is required by law to provide relocation services and make relocation

payments to eligible tenants that are displaced as a result of the Project. Borrower shall comply fully with all relocation laws that are the obligation of Lender or are otherwise applicable to the Project. Borrower's compliance with the relocation requirements as stated in this Section 5 is a material element of this Loan. Borrower's failure to comply with the relocation requirements as stated in this Section 5 is an Event of Default, subject to Borrower's opportunity to cure in accordance with applicable law.

**5.1. RELOCATION COSTS.** Unless otherwise stated in this Agreement, any amounts paid by Lender for relocation costs and services shall be considered advances under the Loan.

**5.2. COOPERATION AND ACCESS.** Borrower shall cooperate fully with Lender in complying with such relocation laws, including without limitation, providing Lender access to all tenants of the Property, to all books and records related to the tenants of the Property and to all properties offered for temporary or permanent relocation. Prior to taking any action with respect to relocation of tenants, Borrower shall meet with Lender to establish reasonable protections for tenants and related reporting requirements for Borrower.

**5.3. BORROWER AS RELOCATION AGENT.** With the approval of Lender, Borrower may act as Lender's agent in accomplishing such relocation. Lender and Borrower by memorandum in writing shall establish their respective duties related to such relocation. If Lender and Borrower agree that Borrower will act as Lender's agent for purposes of this Loan, Borrower may enter into agreements for the provision of relocation services, or Borrower may perform such services directly. Borrower shall, by provisions in its agreements or by direction to its staff, assure that the entity performing the relocation services (a) shall comply with all applicable law, (b) shall fully inform Lender of all relocation activities, (c) shall make all requests for direction or clarification to Lender, (d) and shall respond to and follow the Lender's instruction and direction.

**6. ADDITIONAL SECURITY INSTRUMENTS.** Upon request by Lender, Borrower shall execute and deliver to Lender a security instrument in favor of Lender naming as secured property all contracts related to the Project and all other property of any kind owned by Borrower and used primarily in connection with the Property. Lender may, at any time and from time to time may reasonably require additions of new contracts and other property. Borrower irrevocably assigns to Lender, effective upon Lender's written demand, as security for the due performance of this Loan Agreement all of its right, title, and interest in the Assigned Documents.

**7. CONSTRUCTION.** As a condition of the Loan, Borrower will diligently proceed with construction in accordance with the Scope of Development as approved by Lender. Borrower shall complete such work on or before the Completion Date.

**7.1. CHANGES.** In order to assure sufficient funding for the Project, Borrower shall not authorize any Change that renders the funding for the Project insufficient without the prior written consent of Lender. If in the judgment of Lender, a Change, together with all other Changes contemplated or previously approved by Lender, will cause an increase in the cost of the Project in excess of the contingency reserve identified in the Budget, then Borrower will, as a condition precedent to Lender's consent, provide Lender with proof that the contingency reserve has been increased as necessary to pay for all such Changes. Borrower will submit any such Change to Lender for approval on a form acceptable to Lender, together with approvals by the Project Architect, if any, and the General Contractor. Borrower shall maintain funds available in the contingency reserve that are in

substantially the same percentage of the original contingency reserve as the percentage of the Project then remaining to be completed.

**7.2. CONTRACTORS AND CONTRACTS.** Upon Lender's request, Borrower will furnish to Lender correct lists of all contractors, subcontractors and material suppliers employed in connection with the Project, specifying their addresses, their respective portion of the Project and their respective Project cost. Lender may contact directly each contractor, subcontractor, and material supplier to verify the facts disclosed by the list or for any other purpose related to the Loan. All contracts let by Borrower or its contractors relating to the Project will require them to disclose to Lender information sufficient to make such verification.

**7.3. INSPECTION.** Lender may, at any time and without notice to Borrower, enter on the Property and inspect the Project; and, during regular business hours, examine the books, records, accounting data, plans, shop drawings, specifications, and other documents of Borrower pertaining to the Project and to make extracts or copies. Borrower shall make all such documents available to Lender promptly on demand. Borrower agrees to cooperate fully (and to cause the General Contractor to cooperate fully) with the Lender and its Lender's designated agent and to permit all appropriate access to the Property and to all relevant books and records. Borrower shall bear the cost of reasonable inspections.

**7.4. PROTECTION AGAINST LIEN CLAIMS.** Borrower shall promptly and fully discharge all claims for labor, materials and services in connection with the Project. Borrower shall promptly file a valid Notice of Completion on completion of the Project. Borrower shall promptly file a Notice of Cessation in the event of a cessation of labor on the Project for a continuous Period of (30) days or more. Borrower take all other reasonable steps to protect against the assertion of lien claims against the Property. Within ten (10) days after the filing of any claim of lien against the Property, Borrower shall record a surety bond in the office of the Recorder of the County where the Property is located in an amount sufficient to release the claim of lien or deliver to Lender any other assurance as may be acceptable to Lender as evidenced by Lender's written acceptance of such assurance.

7.4.1. Lender, at any time, may require Borrower to obtain a lien waiver with respect to each payment to the General Contractor and each payment by the General Contractor or Borrower to each of the various subcontractors and material suppliers, Lender, at any time, may require Borrower to make any payments for the Project by joint check made payable to the General Contractor and subcontractor for whose account the payment is to be made, as joint payees.

7.4.2. In any event, Borrower is not required to pay, prior to adjudication, any claims for labor, materials, or services that Borrower, in good faith, reasonably disputes, and that Borrower, at its own expense, is currently and diligently contesting in the proper forum, provided that Borrower has filed the surety bond or given Lender such other assurance as Lender accepts in writing.

**7.5. SECURITY INSTRUMENTS.** Upon request by Lender, Borrower shall execute and deliver to Lender a security instrument in favor of Lender naming as secured property all contracts related to the Project and all other property of any kind owned by Borrower and used primarily in connection with the Property. Lender may require such instrument at any time, and from time to time may require additions of new contracts and other property. Borrower irrevocably assigns to Lender, effective upon Lender's written demand, as security for the due performance of this Loan Agreement all of its right, title, and interest in the Assigned Documents.

**7.6. OTHER LENDER DRAW.** Borrower shall provide Lender with true, accurate and correct copies of each Other Lender Draw, including without limitation all supporting information, documents, and other required submittals. Lender shall have the right to reject an Other Lender Draw, for failing to comply with the Loan, for changing the Project in any material way, or for impairing the ability of Lender to enjoy the practical realization of its rights under the Loan and its related instruments. If Lender rejects an Other Lender Draw, Borrower shall withdraw the Other Lender Draw and shall not accept and shall return any disbursement on account of such Other Lender Draw.

**7.6.1. ACKNOWLEDGMENT OF RELIANCE.** Borrower acknowledges that Lender is making Loan disbursements in advance of disbursements of other lenders in reliance upon Borrowers compliance with this provision.

**7.6.2. LIQUIDATED DAMAGES.** IF BORROWER FAILS TO PROVIDE TO LENDER ANY OTHER LENDER DRAW, LENDER SHALL BE IRREPARABLY HARMED IN THAT BORROWER'S ABILITY TO REPAY THE LOAN AND LENDER'S SECURITY FOR THE LOAN SHALL BE IMPAIRED TO AN UNKNOWN EXTENT. BORROWER AND LENDER AGREE THAT IT WOULD BE IMPRACTICAL OR EXTREMELY DIFFICULT TO FIX ACTUAL RESULTING DAMAGES IN SUCH EVENT. BORROWER AND LENDER, THEREFORE, AGREE THAT AN AMOUNT EQUAL TO TWO PERCENT (2%) OF THE LOAN AMOUNT SHALL CONSTITUTE LIQUIDATED DAMAGES PAYABLE TO LENDER ON ACCOUNT OF SUCH EVENT, RECEIPT OF WHICH SHALL CONSTITUTE THE EXCLUSIVE REMEDY OF LENDER FOR SUCH EVENT, AND ONLY FOR SUCH EVENT. PAYMENT OF SAID AMOUNT TO LENDER AS LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTIONS 3275 OR 3369, BUT INSTEAD, IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO AGENCY PURSUANT TO SECTIONS 1671, 1676 AND 1677 OF THE CALIFORNIA CIVIL CODE. SAID AMOUNT SHALL BE IMMEDIATELY DUE AND PAYABLE AS OF THE DATE ON WHICH BORROWER DELIVERED SUCH OTHER LENDER DRAW TO THE OTHER LENDER. LENDER SHALL HAVE THIRTY (30) DAYS AFTER RECEIVING ACTUAL NOTICE OF SUCH EVENT TO NOTIFY BORROWER IN WRITING THAT LIQUIDATED DAMAGES UNDER THIS SECTION ARE DUE. BORROWER SHALL HAVE FIFTEEN (15) DAYS AFTER SUCH WRITTEN NOTIFICATION TO CURE THE DEFAULT BY WITHDRAWING THE OTHER LENDER DRAW AND RETURNING ANY DISBURSEMENT ON ACCOUNT OF SUCH OTHER LENDER DRAW. IF BORROWER FAILS TO PAY LIQUIDATED DAMAGES WHEN DUE UNDER THIS SECTION, THE LOAN SHALL BE ALL DUE AND PAYABLE AT THE ELECTION OF LENDER.

\_\_\_\_\_ Lender's Initials

\_\_\_\_\_ Borrower's Initials

\_\_\_\_\_ Borrower's Initials

**7.7. NO PRIOR LIENS.** Borrower shall not allow the Project construction to begin or materials to be delivered to the Project until after Close of Escrow.

**7.8. PROJECT SIGN.** If Borrower places a sign on the Property during construction stating the names of the Project participants, it shall also name "Sacramento Housing and Redevelopment Agency" and "The City of Sacramento Economic Development Department" as a participant in the Project. The names on the sign shall be in letters not less than the size of letters used to name any of the other participants the Developer chooses to list. The sign will be removed only after construction has been completed.

**7.9. PREVAILING WAGES.** Lender advises Borrower that the Project is subject to the payment of prevailing wages under California law. Borrower shall inform the General Contractor and shall require

the General Contractor to inform all subcontractors and materialmen furnishing goods or services to the Project of Lender's determination of the applicability of California prevailing wage requirements. Borrower and General Contractor have had the opportunity to meet with their respective legal counsel and to request a determination of the matter before the California Department of Industrial Relations and any other appropriate governmental bodies. Borrower and General Contractor have made their own independent determinations of the applicability of prevailing wage laws and have independently implemented such determinations. Borrower indemnifies, holds harmless and defends the Lender from all additional wages, benefits, fees, penalties, fines, legal fees, court costs, arbitration costs, and other costs arising from the improper application of California prevailing wage laws to the Project by Borrower or General Contractor or both of them.

**7.9.1. LABOR COMPLIANCE MONITORING.** Borrower shall, at Borrower's sole cost and expense, retain a third party consultant approved by the California Department of Industrial Relations to monitor compliance with Section 7.10, herein.

**8. LOAN DISBURSEMENT PROCEDURES.** Developer's equity, in the amount of \$1,000,000 shall be used first. The Agency will disburse its funds for Loan One on a proportionate basis with the third party lender upon the completion or achievement of milestones as identified in the Schedule of Performances, attached to the DDA as Exhibit 4. The Agency will fund 70% of the draw request and the private lender will fund 30%. The Agency will disburse its funds for Loan Two following all other funds being disbursed into the project, including Developer Equity and Loan One funds.

**8.1. CONDITIONS PRECEDENT TO EACH LOAN DISBURSEMENT.** The obligation of Lender to make any disbursements under this Loan Agreement shall be subject to the following conditions precedent:

8.1.1. No Event of Default or Potential Default of Borrower has occurred and is continuing.

8.1.2. If requested by Lender, Borrower has furnished to Lender, as a Project cost, an endorsement to the Title Policy showing no intervening liens or encumbrances on the Property and insuring the full disbursement, together with a satisfactory report under the California Uniform Commercial Code showing no liens or interests other than those of Lender.

8.1.3. Lender is satisfied that all completed work has been done using sound, new materials and fixtures, in a good and proper manner, and all materials, fixtures, and furnishings installed on or acquired for the Property will be owned by Borrower free of any liens, encumbrance, or other interests of any kind other than Lender's lien or security interest.

8.1.4. The representations and warranties in the Loan Documents are correct as of the date of the requested disbursement.

8.1.5. Borrower has paid Lender all commitment, loan, and other fees then due, and Borrower has submitted to Lender all documents, records, statements, certificates, reports, and other materials and information then required to be submitted to Lender for approval under this Loan Agreement.

8.1.6. Borrower has delivered to Lender all funds, documents, instruments, policies, evidence of satisfaction of conditions, and other materials then due or otherwise requested by Lender under the Loan Documents.

**8.2. CONDITIONS PRECEDENT TO FIRST DISBURSEMENT.** Borrower's request for the first Loan disbursement is a representation and warranty by Borrower that there has been no material adverse change in Borrower's financial capacity or in any representation made to Lender in Borrower's application for the Loan or Borrower's supporting documentation. Lender shall make the first loan disbursement under this Loan Agreement when the following conditions precedent and the conditions precedent stated in Section 8.1 have been met:

8.2.1. There is no legal action threatened or pending against Borrower or affecting the Property or any Additional Collateral.

8.2.2. All conditions to Close of Escrow have been satisfied in accordance with the Loan Agreement

8.2.3. Borrower has obtained and Lender has approved a loan approval from a financial institution (or other lender approved by Lender in its sole discretion) to make the construction financing obtained by Borrower which repays after completion of the Project all construction and other loans secured by the Project and which is secured by a senior lien against the Property. Such construction financing approval must provide (a) that it is subject only to those conditions that are usual and customary in the industry and that can be satisfied by the proposed closing date of the construction financing; (b) that it is in full force with no default by any party; and (c) that Lender will have notice of, and a reasonable opportunity to cure, any Borrower defaults.

8.2.4. Lender has provided proof of all insurance required by the Loan Documents.

8.2.5. The construction lender's commitment to make a construction loan is in full force, has not been modified and no event has occurred that with notice or the passage of time or both could result in the termination of it. Nothing in the permanent loan commitment, or submissions and approvals made under it, conflicts with this Loan agreement. Borrower has done all things necessary to keep unimpaired its rights under the loan commitment for the construction lender's construction loan.

8.2.6. Borrower has filed all tax returns required to be filed and paid all taxes due, which, if unfiled or unpaid, might adversely affect Lender's security under the Security Documents.

**8.3. CONDITIONS PRECEDENT TO FINAL DISBURSEMENT.** Lender shall make the final loan disbursement under this Loan Agreement when the following conditions precedent and the conditions precedent stated in Section 8.1 have been met:

8.3.1. As applicable, the Project Architect and the Lender's designated agent will have certified to Lender, on AIA Form G704 and in a manner satisfactory to Lender:

8.3.1.1. That the Project has been duly completed in a good and proper manner using sound, new materials;

8.3.1.2. That the Project complies with the Plans and Specifications, the requirements of all Governmental

8.3.1.3. Authorities and any other party having enforceable rights regarding the construction of the Project; and

8.3.1.4. That the Project is structurally sound.

8.3.2. Borrower has provided to Lender a true, accurate and complete copy of the final draw request to all other lenders for the Project.

8.3.3. Borrower has filed all tax returns required to be filed and paid all taxes due, which, if unfiled or unpaid, might adversely affect Lender's security under the Security Documents.

8.3.4. Title policy endorsements in form and amount satisfactory to Lender (including an endorsement insuring lien-free completion of the Project) have been furnished to Lender.

8.3.5. Borrower has furnished evidence, in form and substance satisfactory to Lender, that:

8.3.5.1. The General Contractor and subcontractors and material suppliers and their subcontractors and material suppliers have been paid in full;

8.3.5.2. Borrower has obtained final certificates of occupancy for all of the Project;

8.3.5.3. All other permits and approvals necessary for the construction, equipping, management, operation, use, or ownership of the Project have been obtained, subject only to those conditions approved by Lender, and

8.3.5.4. The completed Project complies with all applicable zoning regulations, subdivision map acts, building code provisions, and similar governmental laws and regulations, and has all utilities and adequate ingress and egress from public streets, that evidence to be in the form of a certificate executed by Borrower in favor of Lender.

8.3.6. That Borrower has provided to Lender an inventory showing make, model, value, cost, and location of all furniture, fixtures, and equipment and other personal property used in the management, maintenance, and operation of the Project, that are included in the collateral for the Loan.

8.3.7. Borrower has filed a notice of completion of the Project necessary to establish the commencement of the shortest statutory period for filing of mechanics' and materialmen's liens.

8.3.8. Lender has received written approval from the surety on any bond required by Lender.

8.3.9. Borrower has submitted to Lender a final cost certification prepared by a CPA.

8.4. **MAKING DISBURSEMENT.** Lender shall pay each disbursement request within twenty (20) business days after the disbursement request is submitted to Lender, subject to fulfillment of the conditions precedent as stated in Section 8.1. Lender shall disburse the actual cost of the work represented in the disbursement request by Borrower, reduced by the cost of work included in the request and not satisfactorily completed and by the amount of the Retention to be withheld.

8.5. **DISBURSEMENT OF LESS THAN FULL REQUEST.** If Lender makes a disbursement which is less than the full amount of the disbursement requested, Lender shall inform Borrower of the items disallowed for disbursement and the reason for disallowing them. Lender shall disburse the Loan in the following order of priority, except as expressly provided and unless paid by Borrower from other funds: (a) first, to pay Lender's Loan fees and expenses due; (b) second, to pay Lender the interest due

on the Loan; (c) third, at Lender's option to pay all impositions due; (d) fourth, at Lender's option, to make any other payments that Lender may in its sole discretion deem necessary or advisable to protect Lender's security under the Loan Documents; and (e) fifth, to make the disbursement of funds then due in response to Borrower's current request for disbursement. For purposes of this section, impositions means all real estate and personal property taxes and other taxes and assessments, water and sewer rates and charges, and all other charges of a Governmental Authority and any interest or costs or penalties with respect to them, ground rent and charges for any easement or agreement maintained for the benefit of the Property, of every nature and any kind that at any time may be assessed, levied, imposed, or become a lien on the Property, Fixtures or income received from the Property or Fixtures, or any use or occupancy of the Property; and any charges, expenses, payments, or assessments of any nature that are or may become a lien on the Property or the income received from it.

**8.6. NO WAIVER BY DISBURSEMENT.** Regardless of the failure of any condition precedent to Lender's obligation to make disbursements to the Construction Account, Lender may make a disbursement if Lender, in its sole discretion, determines it to be advisable. The making of any disbursement shall not be deemed to constitute an approval or acceptance by Lender of the work completed or a waiver of the condition with respect to a subsequent disbursement.

**8.7. APPROVAL OF OTHER LENDER DISBURSEMENTS.** Borrower shall concurrently submit to the Lender complete disbursement requests, including without limitation all attachments and supporting evidence, made to any other lender, investor of other funding source for the Project. Lender shall have five (5) business days from receipt of such disbursement request to approve or deny such request, in whole or in part. Lender's approval of such disbursements shall be a condition precedent to such other lender's disbursement of funds pursuant to such disbursement request.

8.7.1. Borrower warrants and covenants to the Lender that the foregoing Lender review and approval process shall be acknowledged and accepted in all other loans and funding agreements for the Project.

8.7.2. Lender may deny all or any part of such disbursement request if it fails to provide line-item specification of each of the items for which the disbursement is sought and if such line-item specification fails to match like items in the Budget for the Project.

8.7.3. The disbursement of funds made pursuant to such other disbursement request which has not been reviewed and approved by Lender is a material breach of this Loan.

Notwithstanding any agreement to the contrary, this Section 8.7 regarding such other disbursements shall not be subordinated to any other interest unless such instrument of subordination specifically refers to the subordination of this Section 8.7 and is duly executed by Lender.

**8.8. COMPLIANCE.** To the best of Borrower's knowledge, the construction, use, and occupancy of the Property and Project comply in full with, or if built according to the Plans and Specifications, will comply in full with, all Governmental Requirements. No right to construct or use the Project is to any extent dependent on any real property other than the Property. All approvals, licenses, permits, certifications, filings, and other actions normally accepted as proof of compliance with all Governmental Requirements by prudent lending institutions that make investments secured by real property in the general area of the Property, to the extent available as of the date of this Loan Agreement, have been given or taken, or Borrower is entitled to have them given or taken as the ministerial act of the applicable Governmental Authority.

## **9. DEFAULT**

**9.1. EVENTS OF DEFAULT.** At the option of Lender, each of the following events will constitute an Event of Default, subject to applicable cure rights, if any:

9.1.1. The occurrence of an Event of Default under the Trust Deed.

9.1.2. Borrower's failure to comply with any Governmental Requirements.

9.1.3. Borrower's failure to keep in full force any permit, license, consent, or approval with respect to the construction, occupancy, or use of the Project.

9.1.4. Any material deviation from the Plans and Specifications in the construction of the Project, or the appearance or use of defective workmanship or materials in the construction of the Project, if Borrower fails to remedy them or to diligently proceed to remedy them to Lender's satisfaction within ten (10) days after Lender's written demand to do so.

9.1.5. Borrower's failure to complete the construction of the Project by the Completion Date.

9.1.6. The filing of any lien against the Property or Project or the service on Lender of any bonded stop notice related to the Loan, if the claim of lien or bonded stop notice continues for thirty (30) days without discharge, satisfaction, or the making of provision for payment (including bonding) to the satisfaction of Lender.

9.1.7. The attachment, levy, execution, or other judicial seizure of any portion of the Property or Project, or any substantial portion of the other assets of Borrower, that is not released, expunged, bonded, discharged, or dismissed within thirty (30) days after the attachment, levy, execution, or seizure.

9.1.8. Making of any unauthorized payment from Loan Proceeds or other funds of Lender.

## **10. REMEDIES**

**10.1. OPTION TO ACT.** On the occurrence of any Event of Default, in addition to its other rights in this Loan Agreement or in any of the other Loan Documents, at law, or in equity, Lender may, without prior demand, exercise any one or more of the following rights and remedies:

10.1.1. Terminate its obligation to make disbursements.

10.1.2. Declare the Note and all other sums owing to Lender with respect to the other Loan Documents immediately due.

10.1.3. Make any disbursements after the happening of any one or more of the Events of Default, without waiving its right to demand payment of the Note and all other sums owing to Lender with respect to the other Loan Documents or any other rights or remedies and without liability to make any other or further disbursements, regardless of Lender's previous exercise of any rights and remedies.

10.1.4. Proceed as authorized at law or in equity with respect to the Event of Default, and in connection with that, remain entitled to exercise all other rights and remedies described in this Loan Agreement or the Trust Deed.

10.1.5. Recover its funds expended in exercising or enforcing any of its rights or remedies under any of the Loan Documents, together with interest at the maximum amount allowed by law from the date the funds were spent until repaid which amounts will be deemed secured by the Trust Deed.

**10.2. RIGHTS CUMULATIVE, NO WAIVER.** All of Lender's rights and remedies provided in this Loan Agreement or in any of the other Loan Documents are cumulative and may be exercised by Lender at any time. Lender's exercise of any right or remedy will not constitute a cure of any Event of Default unless all sums then due to Lender under the Loan Documents are repaid and Borrower has cured all other Events of Default. No waiver will be implied from Lender's failure to take, or delay in taking, any action concerning any Event of Default or from any previous waiver of any similar or unrelated Event of Default. Any waiver under any of the Loan Documents must be in writing and will be limited to its specific terms.

**10.3. DISCLAIMER.** Whether Lender elects to employ any of the remedies available to it in connection with an Event of Default, Lender will not be liable to construct, complete, or protect the Project; to pay any expense in connection with the exercise of any remedy; or to perform any other obligation of Borrower.

**10.4. GRANT OF POWER.** Borrower irrevocably appoints Lender as its attorney-in-fact, with full power and authority, including the power of substitution, exercisable on the occurrence of an Event of Default, to act for Borrower in its name, place, and stead as provided in this Loan Agreement to take possession of the Property and Project, remove all employees, contractors, and agents of Borrower, to complete or attempt to complete the work of construction, and to market, sell, or lease the Property and Project; to make any additions, changes, and corrections in the Plans as may be necessary or desirable, in Lender's sole discretion, or as it deems proper to complete the Project; to employ any contractors, subcontractors, suppliers, architects, inspectors, consultants, property managers, and other agents that Lender, in its sole discretion, deems proper for the completion of the Project, for the protection or clearance of title to the Property or Personalty, or for the protection of Lender's interests, to employ security guards to protect the Property and Project from injury or damage; to pay, settle, or compromise all bills and claims then existing or later arising against Borrower that Lender, in its sole discretion, deems proper for the completion of the Project, for the protection or clearance of title to the Property, or for the protection of Lender's interests; to prosecute and defend all actions and proceedings in connection with the Property or Project; and to execute, acknowledge, and deliver all other instruments and documents in the name of Borrower that are necessary or desirable, to exercise Borrower's rights under all contracts concerning the Property or Project, and to do all other acts with respect to the Property or Project that Borrower might do on its own behalf, in each case as Lender in its reasonable discretion deems proper.

**11. LIABILITY INSURANCE.** With regard to this LOAN AGREEMENT, the Borrower shall obtain and maintain for the life of the Regulatory Agreements, and require the Contractor and subcontractors for the Project to obtain and maintain for the term of the development of the Project, such insurance as will protect them, respectively, from the following claims which may result from the operations of the Borrower, Contractor, subcontractor or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable: (a) claims under workers' compensation benefit acts; (b) claims for damages because of bodily injury, occupational sickness or disease, or death of his

employees; (c) claims for damages because of bodily injury, sickness or disease, or death of any person other than his employees; (d) claims for damages insured by usual personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by the Borrower, or (2) by any other person; claims for damages, other than to the construction itself, because of injury to or destruction of tangible property, including resulting loss of use; (e) claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle; and (f) claims for contractual liability arising from the Borrower's obligations under this LOAN AGREEMENT.

**11.1. LIABILITY INSURANCE POLICY LIMITS.** Borrower shall obtain all insurance under this Section 11 written with a deductible of not more than ONE HUNDRED THOUSAND DOLLARS (\$100,000) or an amount approved by Lender, and for limits of liability which shall not be less than the following:

**11.2. WORKER'S COMPENSATION.** Borrower shall obtain and maintain worker's compensation coverage shall be written for the statutory limits as required by Article 1 (commencing with Section 3700) of Chapter 4 of Part 1 of Division 4 of the California Labor Code (as it may, from time to time, be amended) and having an employer's liability of not less than \$1,000,000.

**11.3. COMMERCIAL GENERAL LIABILITY.** Borrower shall obtain and maintain Commercial General Liability insurance in Insurance Services Office ("ISO") policy form CG 00 01 Commercial General Liability (Occurrence) or better. Such insurance shall have limits of liability, which are not less than \$1,000,000, per occurrence limit; \$5,000,000 general aggregate limit, and \$5,000,00 products and completed operations aggregate limit, all per location of the Project.

**11.4. COMPREHENSIVE AUTOMOBILE LIABILITY.** Borrower shall obtain and maintain comprehensive automobile liability coverage for any vehicle used for, or in connection with, the Project (owned, nonowned, hired, leased) having a combined single limit of not less than \$1,000,000.

**11.5. PROPERTY INSURANCE.** For the duration of the Regulatory Agreements, Borrower shall obtain and maintain property insurance in ISO policy form CP 10 30 - Building and Personal Property Coverage - Causes of Loss - Special Form, to the full insurable value of the Property with no coinsurance penalty (and with endorsements of Builder's Risk until completion of construction of the Project), Boiler and Machine to the extent necessary to obtain full insurance coverage, and with such other endorsements and in such amounts as the Lender may reasonably require to protect the Project and the Property. In the event of damage to the Project and subject to the requirements of Lender, Borrower shall use the proceeds of such insurance to reconstruct the Project and the public improvements.

**11.6. INSURANCE PROVISIONS.** Each policy of insurance required under this LOAN AGREEMENT shall be obtained from a provider licensed to do business in California and having a current Best's Insurance Guide rating of B++ VII, which rating has been substantially the same or increasing for the last five (5) years, or such other equivalent rating, as may reasonably be approved by Lender's legal counsel. Each policy shall contain the following provisions as applicable, unless otherwise approved by Lender's legal counsel in writing in advance:

**11.6.1. ADDITIONAL INSURED.** Borrower shall obtain a policy in ISO form CG 20 33 or better, naming Lender as additional insured under the Commercial General Liability Policy.

11.6.2. **SINGLE PROJECT INSURANCE.** It is the intent of the parties that the Project have available all the specified insurance coverages. Borrower shall not provide insurance coverages that are considered in aggregate with other Projects which Borrower or its Contractor might have concurrently under construction. The Lender may at its discretion permit an aggregate policy if and only if Borrower or the respective Contractor or subcontractor has fully disclosed to Lender other projects which will or may be considered in aggregate with the Project, and thereafter, Borrower shall immediately inform Lender of the change in or addition to any such projects. Nevertheless, Lender may, at any time require that the insurance coverage be provided solely for the Project.

11.6.3. **CERTIFIED POLICY COPY.** Borrower shall provide Lender with a certified copy of each required policy of insurance. Pending delivery of the certified policy, Borrower shall provide Lender with a Certificate of Insurance of Insurance for each policy on the applicable ACORD form. The ACORD form shall not substitute for the policy. ACORD 25-S “Certificate of Liability Insurance shall be used for liability insurance deleting the sentence in the top right-hand block immediately below the title (commencing “This certificate is issued as a matter of information . . .) and in the bottom right-hand box above the authorized representative signature, deleting the words “endeavor to” and “but failure to do so shall impose not obligation or liability of any kind upon the insurer, its agents or representatives.”

11.6.4. **CANCELLATION.** Each policy shall bear an endorsement precluding cancellation or termination of the policy or reduction in coverage unless the Lender has been given written notice of such intended action at least thirty (30) days prior to its effective date.

11.7. **FAILURE TO MAINTAIN.** If Borrower fails to obtain or maintain, or cause to be obtained and maintained, any insurance required by this LOAN AGREEMENT, the Lender shall have the right to purchase the insurance on Borrower’s behalf, and Borrower shall promptly reimburse the full cost of such insurance to the Lender. If Borrower fails to reimburse the Lender for insurance, the amount of unpaid reimbursement shall bear interest, at the maximum rate permissible under the law, until paid.

11.8. **BLANKET COVERAGE.** Borrower’s obligation to carry insurance as required under this Section 16 may be satisfied by coverage under a “blanket” policy or policies of insurance (as the term is customarily used in the insurance industry); provided, however, that the Lender shall nevertheless be named as an additional insured under such blanket policy or policies to the extent required by this Section, the coverage afforded the Lender will not be reduced or diminished thereby, and all of the other requirements of this Section 11 with respect to such insurance shall otherwise be satisfied by such blanket policy.

## **12. MISCELLANEOUS**

12.1. **NONRECOURSE.** Notwithstanding any provision of this Loan Agreement or any document evidencing or securing this Loan, Borrower, an Borrower’s principals, agent, officer, and successors in interest shall not be personally liable for the payment of the Loan or any obligation of the Loan.

12.2. **SUBORDINATION.** Borrower may elect to close the Loan in advance of closing of the senior loan, provided that the senior loan meets all requirements of this Loan Agreement. Lender will subordinate this Loan to the senior loan, provided that the senior loan does not require modification of this Loan Agreement or Agency’s execution of any agreements containing new or modified Loan terms. The subordination agreement shall be substantially the same as in **Exhibit 7: Subordination Agreement**, attached hereto.

**12.3. FEDERAL REQUIREMENTS.** If any Loan Program is federally funded, Borrower shall comply with all laws, rules, regulations and funding requirements that govern the use of such funds. Lender shall fully cooperate with, and assist, Borrower in fulfillment of such obligations.

**12.4. NATURE OF REPRESENTATIONS AND WARRANTIES.** Borrower certifies to Lender that all representations and warranties made in this Loan Agreement and all other Loan Documents are true and correct in all material respects and do not contain any untrue statement of a material fact or omit any material fact necessary to make the representations and warranties not misleading. All representations and warranties will remain true and correct in all material respects and will survive so long as any of Borrower's obligations have not been satisfied or the Loan or any part of it remains outstanding, and for any applicable statute of limitations period. Each request by Borrower for a disbursement will constitute an affirmation that all representations and warranties remain true and correct as of the date of that request. Each representation and warranty made in this Loan Agreement, in any other Loan Documents, and in any other document delivered to Lender by Borrower, will be deemed to have been relied on by Lender, regardless of any investigation, inspection, or inquiry made by Lender or any related disbursement made by Lender. The representations and warranties that are made to the best knowledge of Borrower have been made after diligent inquiry calculated to ascertain the truth and accuracy of the subject matter of each representation and warranty.

**12.5. FINANCIAL STATEMENTS.** Borrower shall provide Financial Statements when requested by Lender, but in any event not more often than quarterly during construction of the Project or annually, thereafter. Borrower shall assure that Financial Statements are prepared in accordance with generally accepted accounting principles. If requested by Lender as reasonably necessary to assure the security of its Loan, Borrower shall provide Financial Statements prepared or reviewed by a licensed Certified Public Accountant or Public Accountant and fully reflecting the assets and liabilities of the party concerning whom they were prepared.

**12.6. NO WAIVER.** No failure or delay on the part of Lender in exercising any right or remedy under the Loan Documents will operate as a waiver nor will Lender be estopped to exercise any right or remedy at any future time because of any such failure or delay. No express waiver will affect any matter other than the matter expressly waived and that waiver will be operative only for the time and to the extent stated. Waivers of any covenant, term, or condition in this Loan Agreement will not be construed to waive any subsequent breach of the same covenant, term, or condition.

**12.7. NO THIRD PARTIES BENEFITED.** This Loan Agreement is made and entered into for the sole protection and benefit of the parties and their permitted successors and assigns, and no other Person will have any right of action or any rights to funds at any time on deposit in the Construction Account or the Impound Account, if established.

**12.8. Notices.** Borrower irrevocably appoints Lender as its agent (the agency being coupled with an interest) to file for record any notices of completion, cessation of labor, or any other notice that Lender deems necessary or desirable to protect its interests under this Loan Agreement or under the Loan Documents. All notices to be given under this Loan Agreement shall be in writing and sent to the addresses stated above by one or more of the following methods.

(a) Certified mail, return receipt requested, in which case notice shall be deemed delivered three (3) business days after deposit, postage prepaid in the United States Mail;

(b) A nationally recognized overnight courier, by priority overnight service, in which case notice shall be deemed delivered one (1) business day after deposit with that courier;

(c) Hand delivery with signed receipt for delivery from a person at the place of business of the receiving party and authorized to accept delivery for the receiving party, in which case notice shall be deemed delivered upon receipt, or

(d) Telecopy, if a copy of the notice is also sent the same day by United States Certified Mail, in which case notice shall be deemed delivered one (1) business day after transmittal by telecopier, provided that a transmission report is automatically generated by the telecopier reflecting the accurate transmission of the notices to receiving party at the "Fax Number" given in the Escrow Attachment or to such other address as Borrower or Agency may respectively designate by written notice to the other.

12.9. **ACTIONS.** Lender will have the right to commence, appear in, or defend any action or proceeding purporting to affect the rights, duties, or liabilities of the parties, or the disbursement of any funds under this Loan Agreement. In connection with that, Lender may incur and pay costs and expenses, including, without limitation, reasonable attorney fees. Borrower agrees to pay to Lender on demand all these expenses, and Lender is authorized to disburse funds from the Construction Account for that purpose. This Section does not apply to actions or proceedings between the parties.

12.10. **SIGNS.** Borrower agrees that on the request of Lender, Borrower will erect and place on or in the immediate vicinity of the Property a sign indicating that Lender has provided construction financing for the Project. The sign will remain the property of Lender and will be required to be removed only after construction has been completed. Lender may also arrange for publicity of the Loan in its sole discretion.

12.11. **ASSIGNMENT.** The terms of this Loan Agreement will be binding on and inure to the benefit of successors and assigns of the parties. However, Borrower shall not assign this Loan Agreement or any interest it may have in the monies due or, except as otherwise provided, convey or encumber the Property without the prior written consent of Lender. However, if there is an assignment, conveyance, or encumbrance, Lender may nevertheless at its option continue to make disbursements under this Loan Agreement to Borrower or to those who succeed to Borrower's title, and all sums so disbursed will be deemed to be disbursements under this Loan Agreement and not modifications, and will be secured by the Trust Deed. Lender may at any time assign the Loan Documents to any affiliate of Lender or to a national bank or other lender having experience with construction lending, and the assignee will assume the obligations of Lender, and Lender will have no further obligation of any nature. In that case, the provisions of this Loan Agreement will continue to apply to the Loan, and the assignee will be substituted in the place and stead of Lender, with all rights, obligations, and remedies of Lender, including, without limitation, the right to further assign the Loan Documents. In addition, Lender may at any time assign a participation in the Loan to any other party, provided that Lender continues to be primarily obligated under this Loan Agreement.

12.12. **PREPAYMENT.** Borrower may prepay the Loan only on and subject to the terms and conditions in the Note. Borrower shall have no rights to receive, and under no circumstances will Borrower receive repayment of any fees previously paid to Lender.

12.13. **BORROWER'S RESPONSIBILITIES.** To prevent and avoid construction defects, Borrower shall inspect, review, supervise, and assure the high quality, adequacy, and suitability of: (i) the Plans

and Specifications and all changes and amendments; and (ii) architects, contractors, subcontractors, and material suppliers employed or used in the Project, and the workmanship of and the materials used by all of them; and (iii) the progress and course of construction and its conformance with the Plans and Specifications and any amendments, alterations, and changes that may be approved by Lender. Borrower will, at Borrower's expense, defend, indemnify, save, and hold Lender harmless against all claims, demands, losses, expenses, damages (general, punitive, or otherwise), and causes of action (whether legal or equitable) asserted by any Person arising out of the use of the proceeds of the Loan. Borrower will pay Lender on demand all claims, judgments, damages, losses, or expenses (including attorney fees and expenses) incurred by Lender as a result of any legal action arising out of the use of the proceeds of the Loan. The provisions of this Section will survive the termination of this Loan Agreement and the repayment of the Loan.

**12.14. NONLIABILITY FOR NEGLIGENCE, LOSS, OR DAMAGE.** Borrower acknowledges, understands, and agrees as follows:

12.14.1. The relationship between Borrower and Lender is, and will at all times remain, solely that of borrower and lender, and Lender neither undertakes nor assumes any responsibility for or duty to Borrower to select, review, inspect, supervise, pass judgment on, or inform Borrower of the quality, adequacy, or suitability of the Project work, except as to matters which are within the intent and purpose for which Lender has made the Loan.

12.14.2. Lender owes no duty of care to protect Borrower against negligent, faulty, inadequate, or defective building or construction.

12.14.3. Lender will not be responsible or liable to Borrower for any loss or damage of any kind to person or property whether suffered by Borrower or any other Person or group of Persons or for negligent, faulty, inadequate, or defective building or construction, and Borrower will hold Lender harmless from any liability, loss, or damage for these things.

**12.15. CONTROLLING LAW; VENUE.** The Loan Documents will be governed by and construed in accordance with California law. The venue for any legal action or proceeding will be in the County of Sacramento, California

**12.16. CONSENTS AND APPROVALS.** All consents and approvals by Lender required or permitted by any provision of this Loan Agreement will be in writing. Lender's consent to or approval of any act by Borrower requiring further consent or approval will not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar act.

**12.17. SURVIVAL OF WARRANTIES AND COVENANTS.** The warranties, representations, conditions, covenants, and agreements in this Loan Agreement and in the other Loan Documents will survive the making of the Loan and the execution and delivery of the Note and will continue in full force until the Indebtedness has been paid in full. Nothing in this Section is intended to limit any other provision of the Loan Documents that by their stated terms survive the repayment of the Indebtedness or the termination of any Loan Document.

**12.18. RECORDING AND FILING.** Borrower, at its expense, will cause the Security Documents and all supplements to be recorded and filed and re-recorded and re-filed in any manner and in any places as Lender will reasonably request, and will pay all recording, filing, re-recording, and re-filing taxes, fees, and other charges.

**12.19. LOAN EXPENSES.** In making the first disbursement, Lender may, at its option, deduct from the proceeds of that disbursement a sum equal to the aggregate of the following, to the extent Lender has knowledge of it and demand has been made on Lender at the time of the deposit: all expenses specifically incurred in connection with the Loan or the preparation, execution, and delivery of the Loan Documents, including, but not limited to, recording costs and expenses, transfer and other taxes (if any), surveys, appraisal fees, title and hazard insurance premiums, recording, notary, and escrow charges, and all other similar, usual, or customary loan closing charges and expenses; and any other budgeted expenses that have been approved by Lender in writing; and Lender will, for the benefit of Borrower, pay those amounts over to the respective parties on whose behalf the demands will have been received by Lender. Borrower will pay directly any expenses in connection with the Loan not so paid by Lender, including, without limitation, any of the expenses specified above, and will hold Lender free from any cost, liability, or obligation of any nature in connection with it, including reasonable attorney fees incurred by Lender. Borrower further agrees to pay on demand all out-of-pocket costs and expenses reasonably incurred by Lender including, without limitation, the fees and disbursements of Lender's outside counsel, in connection with: (i) the administration of the Loan, including, without limitation, all approvals or consents given or contemplated to be given under the Loan Documents, all amendments to the Loan Documents entered into by Lender or requested by any Loan Party, and all title insurance policies and endorsements required by Lender, and (ii) the enforcement of any rights or remedies under the Loan Documents, whether any action or proceeding is commenced, or the protection of the security, or interests of Lender under the Loan Documents. All costs and expenses, together with interest at Loan rate, will form a part of the indebtedness and will be secured by the Security Documents.

**12.20. NO REPRESENTATIONS BY LENDER.** By accepting or approving anything required to be observed, performed, or fulfilled, or to be given to Lender pursuant to this Loan Agreement or pursuant to the Loan Documents, including, but not limited to, any officer's certificate, balance sheet, statement of income and expense, or other Financial Statement, survey, appraisal, or insurance policy, Lender will not be deemed to have warranted or represented the sufficiency, legality, effectiveness, or legal effect of it or of any particular term, provision, or condition of it, and any acceptance or approval will not be or constitute any warranty or representation by Lender.

**12.21. AMENDMENT.** The Loan Documents and the terms of each of them may not be modified, waived, discharged, or terminated except by a written instrument signed by the party against whom enforcement of the modification, waiver, discharge, or termination is asserted.

**12.22. TERMINATION.** Except as otherwise provided in the Loan Documents, all rights and obligations under this Loan Agreement will terminate except as to any accrued obligations effective on the payment of all Indebtedness owing by Borrower to Lender.

**12.23. COUNTERPARTS.** The Loan Documents may be executed in any number of counterparts and by different parties in separate counterparts, each of which when executed and delivered will be deemed an original and all of which counterparts taken together will constitute one and the same instrument.

**12.24. SEVERABILITY.** If any term, provision, covenant, or condition or any application is held by a court of competent jurisdiction to be invalid, void, or unenforceable, all terms, provisions, covenants, and conditions and all applications not held invalid, void, or unenforceable will continue in full force and will in no way be affected, impaired, or invalidated.

12.25. **CAPTIONS.** All Article and Section headings in the Loan Documents are inserted for convenience of reference only and do not constitute a part of the Loan Documents for any other purpose.

12.26. **INDEMNITY.** Borrower agrees to defend, indemnify, and hold Lender harmless from all losses, damages, liabilities, claims, actions, judgments, costs, and reasonable attorney fees that Lender may reasonably incur as a direct or indirect consequence of the making of the Loan, Borrower's failure to perform any obligations as and when required by this Loan Agreement or any of the other Loan Documents, the failure at any time of any of Borrower's representations or warranties to be true and correct, or any act or omission by Borrower, any contractor, subcontractor, engineer, architect, or other Person with respect to the Property, the Project, or any portion of them. Borrower will pay immediately on Lender's demand any amounts owing under this indemnity, together with interest at the maximum rate permitted by law from the date Lender makes a payment or incurs a loss. Borrower's duty to indemnify Lender will survive the release and cancellation of the Note and the reconveyance or partial reconveyance of the Trust Deed.

12.27. **FURTHER ASSURANCES.** At Lender's request and at Borrower's expense, Borrower will execute, acknowledge, and deliver all other instruments and perform all other acts necessary, desirable, or proper to carry out the purposes of the Loan Documents or to perfect and preserve any liens created by the Loan Documents.

12.28. **DISCLOSURE OF INFORMATION.** If Lender elects to sell the Loan, Lender may forward to the buyer of the Loan all documents and information related to the Loan in Lender's possession, including without limitation all Financial Statements, whether furnished by Borrower or otherwise.

12.29. **LENDER'S AGENTS.** Lender may designate agents or independent contractors to exercise any of Lender's rights under the Loan Documents. Any reference to Lender in any of the Loan Documents will include Lender's employees, agents, and independent contractors.

12.30. **INTEGRATION AND INTERPRETATION.** The Loan Documents contain or expressly incorporate by reference the entire agreement between Lender and Borrower with respect to the covered matters and supersede all prior negotiations. Any reference to the Property or Project in any of the Loan Documents will include all or any portion of them. Any reference to the Loan Documents themselves in any of the Loan Documents will include all amendments, renewals, or extensions approved by Lender.

12.31. **NUMBER, IDENTITY AND GENDER.** When the context and construction so require, all words used in the singular will be deemed to have been used in the plural and vice versa. Person means any natural person, corporation, firm, partnership, association, trust, government, governmental agency, or any other entity, whether acting in an individual, fiduciary, or other capacity. When the context and construction so require, all words which indicate a gender will be deemed to have been used to indicate the gender as indicated by the context.

[Signature Follows]

**THE PARTIES HAVE EXECUTED THIS LOAN AGREEMENT** in Sacramento, California as of the date first written above.

**BORROWER : THE EBNER/EMPIRE LLC**

**AGENCY: REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO**

By:

By:

\_\_\_\_\_  
Johan Otto, Member

\_\_\_\_\_  
Ray Kerridge, Interim City Manager, as Designated Signatory

By:

\_\_\_\_\_  
Dave Scurfield, Member

Date:

Date:

\_\_\_\_\_

\_\_\_\_\_

Approved as to form:

Approved as to form:

\_\_\_\_\_  
Borrower Counsel

\_\_\_\_\_  
Agency Counsel

## Exhibit 1 - Legal Description

That certain real property situated in the City of Sacramento, County of Sacramento, California, described as follows:

**APN: 006-0072-028**

All that property known as parcel 31-A, as recorded on metropolitan civil engineering company parcel map entitled: "East one-half block bounded by K, L, and 2<sup>nd</sup> Streets and the Embarcadero," in the City of Sacramento, California, recorded on the 25<sup>th</sup> day of February, 1972, I Book 4 of parcel maps at page no. 31a, excepting therefrom any portion of said parcel 31-A lying within the boundaries of parcel E-1, as shown on said parcel map.

**APN: 006-0072-029**

Parcel A, as shown on the parcel map of "parcel 33B and 33C, of the parcel map recorded in Book 4, of parcel maps, Map No. 31," recorded in Book 8 of parcel maps, at page 26, records of said county.

Excepting therefrom any portion thereof lying within the boundaries of parcel E-1 as shown on said parcel map.

## Exhibit 2 – Scope of Development

Exhibit 3 – Note Form

Exhibit 4 – Trust Deed

Exhibit 5 – Regulatory Agreement

Exhibit 6 – Escrow Instructions

**Exhibit 7 - Subordination Agreement**

**NO FEE DOCUMENT:**

Entitled to free recording  
per Government Code 6103.

When recorded, return to:

c/o SACRAMENTO HOUSING AND  
REDEVELOPMENT AGENCY  
630 "I" Street  
Sacramento, CA 95814  
Attention: Legal Department

**SUBORDINATION AGREEMENT**

**NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN OUR SECURITY INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT.**

THIS AGREEMENT, made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by

\_\_\_\_\_  
owner of the land hereinafter described and hereinafter referred to as "Owner", and The  
Redevelopment Agency of the City of Sacramento present owner and holder of the deed of  
trust and note first hereinafter described and hereinafter referred to as "Beneficiary";

WITNESSETH:

THAT WHEREAS, Owner did on \_\_\_\_\_, execute a deed of  
trust to \_\_\_\_\_ as trustee, covering:

\_\_\_\_\_ to secure a note in the sum of \$\_\_\_\_\_, dated  
\_\_\_\_\_, in favor of beneficiary, which deed of trust was recorded  
\_\_\_\_\_, in book \_\_\_\_\_ page \_\_\_\_\_, Official Records of said county and is subject and subordinate to the deed of trust next hereinafter described; and

WHEREAS, Owner has executed, or is about to execute, a note in the amount of  
\$ \_\_\_\_\_, dated \_\_\_\_\_, in favor of  
\_\_\_\_\_, hereinafter referred to as "Lender", payable with interest and upon the terms and conditions described therein, which note evidences an additional loan to be made by Lender to Owner under the terms and provisions of, and secured by, said deed of trust in favor of Lender; and

WHEREAS, it is a condition precedent to obtaining said additional loan that said deed of trust in favor of Lender, securing all obligations recited therein as being secured thereby, including but not limited to said additional loan, shall unconditionally be and

remain at all times a lien or charge upon the land hereinbefore described, prior and superior to the lien or charge of the deed of trust first above mentioned; and

WHEREAS, Lender is willing to make said additional loan provided the deed of trust securing the same is a lien or charge upon said land prior and superior to the lien or charge of the deed of trust first above mentioned and provided that Beneficiary will specifically and unconditionally subordinate the lien or charge of the deed of trust first above mentioned to the lien or charge of said deed of trust in favor of Lender; and

WHEREAS, it is to the mutual benefit of the parties hereto that Lender make said additional loan to Owner; and Beneficiary is willing that the deed of trust securing the same shall constitute a lien or charge upon said land which is unconditionally prior and superior to the lien or charge of the deed of trust above mentioned.

NOW, THEREFORE, in consideration of the mutual benefits accruing to the parties hereto and other valuable consideration, the receipt and sufficiency of which consideration is hereby acknowledged, and in order to induce Lender to make the additional loan above referred to, it is hereby declared, understood, and agreed as follows:

- (1) That said deed of trust in favor of Lender, as to said additional loan as well as all other obligations recited as being secured thereby, and any renewals or extensions hereof, shall unconditionally be and remain at all times a lien or charge on the property therein described, prior and superior to the lien or charge of the deed of trust first above mentioned.
- (2) That Lender would not make its additional loan above described without this subordination agreement.
- (3) That this agreement shall be the whole and only agreement with regard to the subordination of the lien or charge of the deed of trust first above mentioned to the lien or charge of the deed of trust in favor of Lender above referred to and shall supersede and cancel, but only insofar as would affect the priority between the deeds of trust hereinbefore specifically described, any prior agreements as to such subordination, including, but not limited to, those provisions, if any, contained in the deed of trust first above mentioned, which provide for the subordination of the lien or charge thereof to another deed or deeds of trust or to another mortgage or mortgages.

Beneficiary declares, agrees, and acknowledges that

- (a) He consents to and approves (i) all provisions of the note evidencing said additional loan and the deed of trust securing same, and (ii) all agreements, including but not limited to any loan or escrow agreements, between Owner and Lender for the disbursement of the proceeds of Lender's additional loan;
- (b) Lender in making disbursements pursuant to any such agreement is under no obligation or duty to, nor has Lender represented that it will, see to the application of such proceeds by the person or persons to whom Lender disburses such proceeds and any application or use of such proceeds for purposes other than those

provided for in such agreement or agreements shall not defeat the subordination herein made in whole or in part;

(c) He intentionally and unconditionally waives, relinquishes, and subordinates the lien or charge of the deed of trust first above mentioned in favor of the lien or charge upon said land of the deed of trust in favor of Lender, as to said additional loan as well as all other obligations recited therein as being secured thereby, and understands that in reliance upon and in consideration of this waiver, relinquishment and subordination specific loans and advances are being and will be made and, as part and parcel thereof, specific monetary and other obligations are being and will be entered into which would not be made or entered into but for said reliance upon this waiver, relinquishment and subordination; and

(d) An endorsement has been placed upon the note secured by the deed of trust first above mentioned that said deed of trust has by this instrument been subordinated to the lien or charge of the deed of trust in favor of Lender above referred to.

**NOTICE: THIS SUBORDINATION AGREEMENT CONTAINS A PROVISION WHICH ALLOW THE PERSON OBLIGATED ON YOUR REAL PROPERTY SECURITY TO OBTAIN A LOAN, A PORTION OF WHICH MAY BE EXPENDED FOR OTHER PURPOSES THAN IMPROVEMENT OF THE LAND.**

\_\_\_\_\_  
Beneficiary

\_\_\_\_\_  
Owner